

## House Bill 578

By: Representatives Dempsey of the 13<sup>th</sup>, Cooper of the 43<sup>rd</sup>, Oliver of the 82<sup>nd</sup>, Welch of the 110<sup>th</sup>, Fleming of the 121<sup>st</sup>, and others

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated,  
2 relating to general provisions regarding the Department of Human Services, so as to provide  
3 for the review of certain law enforcement conviction data with regard to persons seeking to  
4 become volunteers, interns, students, or employees; to provide for related matters; to provide  
5 for effective dates; to repeal conflicting laws; and for other purposes.

6 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

7 **SECTION 1.**

8 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to  
9 general provisions regarding the Department of Human Services, is amended by revising  
10 Code Section 49-2-14, relating to record search for conviction data on prospective  
11 employees, as follows:

12 "49-2-14.

13 (a) As used in this Code section, the term 'conviction data' means a record of a finding or  
14 verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime,  
15 regardless of whether an appeal of the conviction has been sought.

16 (b) The department may receive from any law enforcement agency conviction data that is  
17 relevant to a person whom the department, ~~or its contractors, or a district or county health~~  
~~agency~~ is considering as a final selectee for employment ~~or to serve as a volunteer, intern,~~  
~~or student~~ in a position the duties of which involve direct care, treatment, custodial  
20 responsibilities, ~~access to confidential or legally protected systems or information~~, or any  
21 combination thereof for its clients ~~or for administrative support functions~~. ~~The department~~  
22 ~~may also receive conviction data which is relevant to a person whom the department, its~~  
23 ~~contractors, or a district or county health agency is considering as a final selectee for~~  
24 ~~employment in a position if, in the judgment of the employer, a final employment decision~~  
25 ~~regarding the selectee can only be made by a review of conviction data in relation to the~~  
26 ~~particular duties of the position and the security and safety of clients, the general public,~~

27 ~~or other employees.~~ Further, the department or any licensed child-placing agency,  
28 designated by the department to assist it in preparing studies of homes in which children  
29 in its custody may be placed, may receive from any law enforcement agency conviction  
30 data that is relevant to any adult person who resides in a home where children in the  
31 custody of the department may be placed.

32 (c) The department shall establish a uniform method of obtaining conviction data under  
33 subsection (a) of this Code section which shall be applicable to the department and its  
34 contractors. Such uniform method shall require the submission to the Georgia Crime  
35 Information Center of fingerprints and the records search fee in accordance with Code  
36 Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall  
37 promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau  
38 records and an appropriate report and shall promptly conduct a search of its own records  
39 and records to which it has access. After receiving the fingerprints and fee, the Georgia  
40 Crime Information Center shall notify the department in writing of any derogatory finding,  
41 including, but not limited to, any conviction data regarding the fingerprint records check  
42 or if there is no such finding.

43 (d) All conviction data received shall be for the exclusive purpose of making employment  
44 decisions; or determining the fitness and suitability to provide services to the department  
45 or its contractors in the capacity of an employee, volunteer, intern, or student; or decisions  
46 concerning children in the custody of the department or who are the subjects of a child  
47 protective services referral, complaint, or investigation and shall be privileged and shall not  
48 be released or otherwise disclosed to any other person or agency. Immediately following  
49 the employment decisions or upon receipt of the conviction data concerning any adult  
50 person who has contact with a child who is the subject of a child protective services  
51 referral, complaint, or investigation or who resides in a home where children in the custody  
52 of the department may be placed, all such conviction data collected by the department or  
53 the licensed child-placing agency shall be maintained by the department or child-placing  
54 agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of  
55 Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the  
56 unauthorized release or disclosure of any conviction data shall be as prescribed pursuant  
57 to laws regarding and rules or regulations of the Federal Bureau of Investigation and the  
58 Georgia Crime Information Center, as is applicable.

59 (e) Notwithstanding the provisions of subsection (c) of this Code section, when a  
60 contractor to this department is a personal care home, the provisions of Code Sections  
61 31-7-250 through ~~31-7-264~~ 31-7-265 shall apply.

62 (f) The department may promulgate written rules and regulations to implement the  
63 provisions of this Code section.

64       (g) The department may receive from any law enforcement agency criminal history  
65       information, including arrest and conviction data, and any and all other information which  
66       it may be provided pursuant to state or federal law which is relevant to any adult person  
67       who resides in a home where children in the custody of the department have been or may  
68       be placed or which is relevant to any adult person who resides in the home of or provides  
69       care to a child who is the subject of a child protective services referral, complaint, or  
70       investigation to the fullest extent permissible by federal and state law, including but not  
71       limited to Public Law 92-544. The department shall establish a uniform method of  
72       obtaining criminal history information under this subsection. Such method shall require  
73       the submission to the Georgia Crime Information Center of fingerprints together with any  
74       required records search fee in accordance with Code Section 35-3-35. Upon receipt  
75       thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints  
76       submitted by the department to the Federal Bureau of Investigation for a search of bureau  
77       records and an appropriate report and shall promptly conduct a search of its own records  
78       and records to which it has access. Such method shall also permit the submission of the  
79       names alone of such adult persons to the proper law enforcement agency when the  
80       department is considering placement of a child in exigent circumstances for a name based  
81       check of such adult person's criminal history information as maintained by the Georgia  
82       Crime Information Center and the Federal Bureau of Investigation. In such exigent  
83       circumstances, the department shall submit fingerprints of those adult persons in the  
84       placement home, together with any required records search fee, to the Federal Bureau of  
85       Investigation within 15 calendar days of the date of the name based check on that person.  
86       The fingerprints shall be forwarded to the Federal Bureau of Investigation through the  
87       Georgia Crime Information Center in accordance with Code Section 35-3-35. Following  
88       the submission of such fingerprints, the department may receive the criminal history  
89       information, including arrest and conviction data, relevant to such person. In the event that  
90       a child has been placed in exigent circumstances, a name based records search has been  
91       requested for any adult person of the placement household, and that adult refuses to provide  
92       fingerprints after being requested to do so by the department, the child shall be immediately  
93       removed from the placement household by the department, provided that the child is in the  
94       custody of the department.

95       (h) The department shall be authorized to conduct a name or descriptor based check of any  
96       adult person's criminal history information, including arrest and conviction data, and other  
97       information from the Georgia Crime Information Center regarding any adult person who  
98       resides in a home where children in the custody of the department have been or may be  
99       placed or which is relevant to any adult person who resides in the home of or provides care  
100      to a child who is the subject of a child protective services referral, complaint, or

101 investigation without the consent of such adult person and without fingerprint comparison  
102 to the fullest extent permissible by federal and state law.

103 (i) If the department is participating in the program described in subparagraph (a)(1)(F)  
104 of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of  
105 Investigation shall be authorized to retain fingerprints obtained pursuant to this Code  
106 section for such program and the department shall notify the individual whose fingerprints  
107 were taken of the parameters of such retention."

108 **SECTION 2.**

109 Article 1 of Chapter 2 of Title 49 of the Official Code of Georgia Annotated, relating to  
110 general provisions regarding the Department of Human Services, is amended by revising  
111 Code Section 49-2-14, relating to record search for conviction data on prospective  
112 employees, as follows:

113 "49-2-14.

114 (a) As used in this Code section, the term 'conviction data' means a record of a finding or  
115 verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime,  
116 regardless of whether an appeal of the conviction has been sought.

117 (b) The department may receive from any law enforcement agency conviction data that is  
118 relevant to a person whom the department, ~~or its contractors, or a district or county health~~  
119 ~~agency~~ is considering as a final selectee for employment ~~or to serve as a volunteer, intern,~~  
120 ~~or student~~ in a position the duties of which involve direct care, treatment, custodial  
121 responsibilities, ~~access to confidential or legally protected systems or information,~~ or any  
122 combination thereof for its clients ~~or for administrative support functions.~~ The department  
123 may also receive conviction data which is relevant to a person whom the department, its  
124 contractors, ~~or a district or county health agency~~ is considering as a final selectee for  
125 employment in a position if, in the judgment of the employer, a final employment decision  
126 regarding the selectee can only be made by a review of conviction data in relation to the  
127 particular duties of the position and the security and safety of clients, the general public,  
128 or other employees. Further, the department or any licensed child-placing agency,  
129 designated by the department to assist it in preparing studies of homes in which children  
130 in its custody may be placed, may receive from any law enforcement agency conviction  
131 data that is relevant to any adult person who resides in a home where children in the  
132 custody of the department may be placed.

133 (c) The department shall establish a uniform method of obtaining conviction data under  
134 subsection (a) of this Code section which shall be applicable to the department and its  
135 contractors. Such uniform method shall require the submission to the Georgia Crime  
136 Information Center of fingerprints and the records search fee in accordance with Code

137     Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall  
138     promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau  
139     records and an appropriate report and shall promptly conduct a search of its own records  
140     and records to which it has access. After receiving the fingerprints and fee, the Georgia  
141     Crime Information Center shall notify the department in writing of any derogatory finding,  
142     including, but not limited to, any conviction data regarding the fingerprint records check  
143     or if there is no such finding.

144     (d) All conviction data received shall be for the exclusive purpose of making employment  
145     decisions; or determining the fitness and suitability to provide services to the department  
146     or its contractors in the capacity of an employee, volunteer, intern, or student; or decisions  
147     concerning children in the custody of the department or who are the subjects of a child  
148     protective services referral, complaint, or investigation and shall be privileged and shall not  
149     be released or otherwise disclosed to any other person or agency. Immediately following  
150     the employment decisions or upon receipt of the conviction data concerning any adult  
151     person who has contact with a child who is the subject of a child protective services  
152     referral, complaint, or investigation or who resides in a home where children in the custody  
153     of the department may be placed, all such conviction data collected by the department or  
154     the licensed child-placing agency shall be maintained by the department or child-placing  
155     agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of  
156     Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the  
157     unauthorized release or disclosure of any conviction data shall be as prescribed pursuant  
158     to laws regarding and rules or regulations of the Federal Bureau of Investigation and the  
159     Georgia Crime Information Center, as is applicable.

160     (e) Notwithstanding subsection (c) of this Code section, when a contractor to this  
161     department is a personal care home, Article 14 of Chapter 7 of Title 31 shall apply.

162     (f) The department may promulgate written rules and regulations to implement the  
163     provisions of this Code section.

164     (g) The department may receive from any law enforcement agency criminal history  
165     information, including arrest and conviction data, and any and all other information which  
166     it may be provided pursuant to state or federal law which is relevant to any adult person  
167     who resides in a home where children in the custody of the department have been or may  
168     be placed or which is relevant to any adult person who resides in the home of or provides  
169     care to a child who is the subject of a child protective services referral, complaint, or  
170     investigation to the fullest extent permissible by federal and state law, including but not  
171     limited to Public Law 92-544. The department shall establish a uniform method of  
172     obtaining criminal history information under this subsection. Such method shall require  
173     the submission to the Georgia Crime Information Center of fingerprints together with any

174 required records search fee in accordance with Code Section 35-3-35. Upon receipt  
175 thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints  
176 submitted by the department to the Federal Bureau of Investigation for a search of bureau  
177 records and an appropriate report and shall promptly conduct a search of its own records  
178 and records to which it has access. Such method shall also permit the submission of the  
179 names alone of such adult persons to the proper law enforcement agency when the  
180 department is considering placement of a child in exigent circumstances for a name based  
181 check of such adult person's criminal history information as maintained by the Georgia  
182 Crime Information Center and the Federal Bureau of Investigation. In such exigent  
183 circumstances, the department shall submit fingerprints of those adult persons in the  
184 placement home, together with any required records search fee, to the Federal Bureau of  
185 Investigation within 15 calendar days of the date of the name based check on that person.  
186 The fingerprints shall be forwarded to the Federal Bureau of Investigation through the  
187 Georgia Crime Information Center in accordance with Code Section 35-3-35. Following  
188 the submission of such fingerprints, the department may receive the criminal history  
189 information, including arrest and conviction data, relevant to such person. In the event that  
190 a child has been placed in exigent circumstances, a name based records search has been  
191 requested for any adult person of the placement household, and that adult refuses to provide  
192 fingerprints after being requested to do so by the department, the child shall be immediately  
193 removed from the placement household by the department, provided that the child is in the  
194 custody of the department.

195 (h) The department shall be authorized to conduct a name or descriptor based check of any  
196 adult person's criminal history information, including arrest and conviction data, and other  
197 information from the Georgia Crime Information Center regarding any adult person who  
198 resides in a home where children in the custody of the department have been or may be  
199 placed or which is relevant to any adult person who resides in the home of or provides care  
200 to a child who is the subject of a child protective services referral, complaint, or  
201 investigation without the consent of such adult person and without fingerprint comparison  
202 to the fullest extent permissible by federal and state law.

203 (i) If the department is participating in the program described in subparagraph (a)(1)(F)  
204 of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of  
205 Investigation shall be authorized to retain fingerprints obtained pursuant to this Code  
206 section for such program and the department shall notify the individual whose fingerprints  
207 were taken of the parameters of such retention."

208

**SECTION 3.**

209 Section 2 of this Act shall become effective on October 1, 2019. The remaining sections of  
210 this Act shall become effective upon its approval by the Governor or upon its becoming law  
211 without such approval.

212

**SECTION 4.**

213 All laws and parts of laws in conflict with this Act are repealed.